

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

STEPHEN HARVEY,)
)
Petitioner,)
)
vs.) 1:12-cv-346-TWP-DML
)
)
SUPERINTENDENT, Pendleton)
Correctional Facility,)
)
Respondent.)

**Entry Discussing Petition for Writ of Habeas Corpus
and Denying Certificate of Appealability**

The petition for a writ of habeas corpus of Stephen Harvey (“Harvey”) must be **summarily dismissed** pursuant to Rule 4 because his petition shows on its face that he is not entitled to the relief he seeks. In addition, the court finds that a certificate of appealability should not issue.

Petition for Writ of Habeas Corpus

“Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face.” *McFarland v. Scott*, 512 U.S. 849, 856 (1994). This authority is conferred by Rule 4 of the *Rules Governing Section 2254 Cases in United States District Courts*. See *Small v. Endicott*, 998 F.2d 411, 414 (7th Cir. 1993).

“[H]abeas corpus has its own peculiar set of hurdles a petitioner must clear before his claim is properly presented to the district court.” *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 14 (1992) (O’Connor, J., dissenting) (internal citations omitted). In this case, Harvey encounters the hurdle produced by the one-year statute of limitations.

Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), federal habeas petitions challenging a judgment of a state court are subject to a one-year statute of limitations. 28 U.S.C. § 2244(d). The effective date of the AEDPA was April 24, 1996. The limitation period, with certain exceptions, begins to run after the completion of direct review of the judgment by state courts. 28 U.S.C. § 2244(d)(1)(A).

On May 4, 2004, Harvey pled guilty in the Whitley Circuit Court to robbery, to criminal confinement, and to being a habitual offender. Harvey was sentenced on June 1, 2004. There was no direct appeal from this disposition, so Harvey’s conviction became “final,” for federal habeas corpus purposes on July 1, 2004. See *Griffith v. Kentucky*, 479 U.S. 314, 321 & n.6 (1987) (a conviction is “final” when the time for seeking direct review from the judgment affirming the conviction has expired).

The statute of limitations established by 28 U.S.C. 2244(d) expired on July 1, 2005.

Harvey filed a petition for post-conviction relief in 2009. The trial court’s denial of the petition for post-conviction relief was affirmed on appeal in *Harvey v. State*, 945 N.E.2d 832 (Ind.Ct.App. April 7, 2011).

From the foregoing, it is evident that Harvey's statute of limitations expired on July 1, 2005, and that his federal habeas petition was filed in March 2012, almost seven years later. While it is true that Harvey filed a petition for post-conviction relief after the statute of limitations had expired, that had no effect on the expiration or computation of the statute of limitations. *Fernandez v. Sternes*, 227 F.3d 977, 978-79 (7th Cir. 2000) (explaining that it is illogical to toll a limitations period that has already passed).

Harvey's petition for a writ of habeas corpus shows on its face that it was filed beyond the statute of limitations and that for this reason he is not entitled to the relief he seeks. His petition for a writ of habeas corpus is therefore **dismissed as untimely**. Harvey's request to proceed *in forma pauperis* [Dkt. 2] is **granted**.

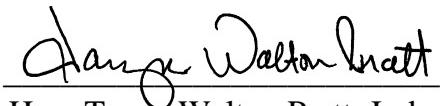
Judgment consistent with this Entry shall now issue.

Certificate of Appealability

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the *Rules Governing 2254 Proceedings*, and 28 U.S.C. § 2253(c), the court finds that Harvey has failed to show that reasonable jurists would find it debatable whether [this court] was correct in its procedural ruling.[@] *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The court therefore **denies** a certificate of appealability.

IT IS SO ORDERED.

Date: 04/09/2012



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

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